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15 IN THE UNITED STATES DISTRICT COURT  
16  
17 EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 CASE NO. 2:20-CR-0004-TLN

20 Plaintiff,

21 STIPULATION REGARDING EXCLUDABLE  
22 TIME PERIODS UNDER SPEEDY TRIAL ACT;  
23 FINDINGS AND ORDER

24 v.

25 RUBEN ANGEL CASTRO,

26 DATE: April 23, 2020

27 Defendant.

28 TIME: 9:30 a.m.

COURT: Hon. Troy L. Nunley

1  
2 This case is set for a status conference on April 23, 2020. By this stipulation and proposed order,  
3 the parties respectfully request that the Court continue the status conference until June 18, 2020. To the  
4 extent it is needed, this stipulation supplements the basis for exclusion of time under General Order 617,  
5 and all prior General Orders addressing public health concerns, and requests that the Court also exclude  
6 time between April 23, 2020, and June 18, 2020, under Local Code T4, for the reasons set forth below.

7  
8 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the  
9 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to  
10 continue all criminal matters to a date after June 1. This and previous General Orders were entered to  
11 address public health concerns related to COVID-19.

12  
13 Although the General Orders address the district-wide health concern, the Supreme Court has  
14 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
15 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.

1 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 2 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 3 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 4 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 5 or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 7 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice  
 8 continuances are excludable only if “the judge granted such continuance on the basis of his findings that  
 9 the ends of justice served by taking such action outweigh the best interest of the public and the  
 10 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless  
 11 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the  
 12 ends of justice served by the granting of such continuance outweigh the best interests of the public and  
 13 the defendant in a speedy trial.” *Id.*

14 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 15 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 16 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 17 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 18 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 19 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
 20 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
 21 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
 22 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

23 In light of the societal context created by the foregoing, this Court should consider the following  
 24 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
 25 justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date  
 26 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any

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 28 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
 Cal. March 18, 2020).

1 pretrial continuance must be “specifically limited in time”).

2 **STIPULATION**

3 1. By previous order, this matter was set for status on April 23, 2020.

4 2. By this stipulation, defendant now moves to continue the status conference until June 18, 2020, at 9:30 a.m., and to exclude time between April 23, 2020, and June 18, 2020, under Local Code T4.

5 3. The parties agree and stipulate, and request that the Court find the following:

6 a) The government has represented that the discovery associated with this case includes, among other things, a considerable number of investigative reports, video surveillance, 7 audio recordings, and laboratory reports. The government is in the process of producing this discovery, which it anticipates will take up several DVDs.

8 b) Counsel for defendant believes she will need some time to go through the discovery, once the government has produced it. Counsel will also need additional time to consult 9 with her client, to review the current charges, to conduct investigation and research related to the 10 charges, to review discovery for this matter, to discuss potential resolutions with her client, to 11 prepare pretrial motions, and to otherwise prepare for trial.

12 c) Counsel for defendant believes that failure to grant the above-requested 13 continuance would deny counsel the reasonable time necessary for effective preparation, taking 14 into account the exercise of due diligence.

15 d) The government does not object to the continuance.

16 e) Based on the above-stated findings, the ends of justice served by continuing the 17 case as requested outweigh the interest of the public and the defendant in a trial within the original 18 date prescribed by the Speedy Trial Act.

19 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, 20 et seq., within which trial must commence, the time period of April 23, 2020 to June 18, 2020, 21 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] 22 because it results from a continuance granted by the Court at defendants’ request on the basis of 23 the Court’s finding that the ends of justice served by taking such action outweigh the best interest 24 of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: April 20, 2020

McGREGOR W. SCOTT  
United States Attorney

/s/ JAMES R. CONOLLY  
JAMES R. CONOLLY  
Assistant United States Attorney

Dated: April 20, 2020

/s/ LINDA C. ALLISON  
LINDA C. ALLISON  
Assistant Federal Defender  
Counsel for Defendant  
RUBEN ANGEL CASTRO

## **FINDINGS AND ORDER**

IT IS SO FOUND AND ORDERED this 21<sup>st</sup> day of April, 2020.

Troy L. Nunley